IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 74 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDUSTRIAL LININGS

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 74 of 1990
MR RK PATEL for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 16/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the assessee, the following question of law has been referred to this Court under the provisions of Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

"Whether, on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the provisions of Section 40(b) of the Act were applicable in relation to (a) salary amount to Rs.42,000/- paid to Shri N.R. Shah (b)consulting fees of Rs.12,000/- paid to Shri V.R. Shah, and (c) professional fees of Rs.4500/- to Shri S.R. Shah, even though each of them was a partner in the assessee firm in his capacity as Karta of his H.U.F."

2. We have heard learned advocate Shri R.K.Patel for the applicant-assessee and learned advocate Shri M.R. Bhatt for the respondent-revenue.

3. Learned advocates have very fairly submitted that the question of law which has been referred to this Court in this Reference has already been decided by this Court in Income Tax Reference No. 66/1992.

4. It has been further submitted that in Income Tax Reference No. 66/1992, the same question had arisen in respect of assessment year 1982-83 whereas, in the present controversy, we are concerned with the assessment year 1981-82. Looking to the law laid down by this Court in Income Tax Reference No.66/1992 decided on 20th November, 2002 in the case of the assessee itself, we decide the question in the affirmative i.e. in favour of the revenue and against the assessee. It is pertinent to note here that while deciding the Income Tax Reference No.66/1992 this Court had relied upon a judgement delivered by this Court in the case of NATIONAL WIRE MANUFACTURING CO. Vs. COMMISSIONER OF INCOME-TAX reported in 223 I.T.R. 496.

5. In the circumstances, the Reference stands disposed of with no order as to costs.

(A.R. DAVE,J.)

(A.M. KAPADIA,J.)

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